

J. FRANK McCABE (SBN 48246)
Attorney at Law
500 Sansome Street, Suite 212
San Francisco, California 94111
Telephone: (415) 397-1757
Facsimile: (415) 433-7258

Attorney for Defendant
KENNETH EUGENE HOLLOWAY

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

UNITED STATES OF AMERICA,) NO. CR-07-00344 CW

Plaintiff,)

v.)

KENNETH EUGENE HOLLOWAY,)

Defendant.)

UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

KENNETH EUGENE HOLLOWAY,)

Defendant.)

NO. CR-97-40059 CW

**SENTENCING MEMORANDUM
OF DEFENDANT HOLLOWAY**

Sentencing Hearing

Date: April 16, 2008

Time: 2:00 p.m.

Court: Hon. Claudia Wilken

Defendant Kenneth Eugene Holloway, by and through his
counsel, submits the following sentencing memorandum:

On January 30, 2008, Mr. Holloway pled guilty to counts
one and three of the indictment. Count one charged possession with
intent to distribute cocaine base in violation of 21 U.S.C. section
841(a)(1). Count three charged Holloway with carrying a firearm

1 during a drug trafficking crime in violation of 18 U.S.C. section
2 924(c) (1) (A) .

3 Holloway's guilty plea was pursuant to Rule 11(c) (1) (C) .
4 The plea agreement provided that both the government and the defense
5 recommend a sentence of between 12 and 13 years imprisonment, which
6 would encompass Holloway's supervised release violation.

7 Defendant Holloway urges the Court to impose a sentence of
8 12 years for the following reasons:

9 a) The applicable Guideline for cocaine base covers an
10 amount of between 5 and 20 grams. The weight of the cocaine base
11 found in the vehicle Mr. Holloway had been driving was 5.5 grams --
12 only slightly over the minimum amount that would trigger that
13 Guideline.

14 b) There was a firearm in the vehicle. However, it was
15 not on Mr. Holloway's person. He did not fire it, point it at
16 anyone or display it in any manner. When he fled the vehicle after
17 a traffic stop, he did not take the firearm with him. It was left
18 in the vehicle.

19 c) Mr. Holloway is 41 years of age. He will be
20 approximately 51 years old when he is released from custody.
21 Counsel recently saw a statistic that only 3% of all recidivist
22 criminals re-offend after age 55. Upon release, he will be very
23 close to that age.

24
25 Mr. Holloway was incarcerated in Alameda County on
26 March 30, 2007 on charges which were IDENTICAL to the charges in the
27 instant indictment. After a preliminary hearing, Alameda County
28 chose to dismiss its charges as a federal indictment was covering

1 the charges returned on May 31, 2007. He was released from Alameda
2 County custody on June 12, 2007.

3 Federal law is clear that he should receive credit toward
4 his federal sentence from March 30 to June 12, 2007 -- 75 days by
5 counsel's calculation -- because his incarceration was due
6 exclusively to the offenses which became the federal indictment.
7 See 18 U.S.C. section 3585(b); United States v. Payton, 159 F.3d 49
8 (2d Cir. 1998); United States v. Moore, 978 F.2d 1029 (8th Cir.
9 1992).

10 However, before federal authorities could pick up
11 Mr. Holloway, he was transferred to Contra Costa County to face
12 charges there. He has remained in Contra Costa custody since June
13 12, 2007.¹ He had attempted to gain release from Contra Costa
14 County but these federal charges have prevented his release and in
15 essence he has remained there because of the federal hold. Thus, he
16 deserves to receive federal credit for this time as well.

17 Defendant Holloway makes a final request that the Court
18 recommend to the Bureau of Prisons that he be incarcerated outside
19 the state of California but in either Oregon or Arizona.

20 DATED: April 7, 2008.

21 Respectfully submitted,

22
23 /s/
J. FRANK McCABE
24 Counsel for Defendant Holloway
25
26

27
28 ¹ He has pled guilty there and expects to be sentenced to a
term of 13 years 8 months to run concurrent with his
federal sentence.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **SENTENCING MEMORANDUM OF DEFENDANT HOLLOWAY** was this date faxed to the following:

DOUGLAS SPRAGUE
ASSISTANT U.S. ATTORNEY
U.S. ATTORNEY'S OFFICE
1301 CLAY ST STE 340S
OAKLAND CA 94612
Fax: (510) 637-3724

CONSTANCE M. COOK
U.S. PROBATION OFFICER
1301 CLAY ST STE 220S
OAKLAND CA 94612
Fax: (510) 637-3625

I certify under penalty of perjury that the foregoing is true and correct.

Executed on April 7, 2008, at San Francisco, California.

/s/
KIMBERLY COOKE